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March 31, 2017

VIA ECF & Hand Delivery

Honorable Paul G. Gardephe
United States District Judge
Southern District of New York
40 Foley Square, Room 2204
New York, New York 10007

Re: *Jeniece Ilkowitz, et al. v. Michael Durand, et al.*
Case No. 1:17-CV-00773-PGG

Dear Judge Gardephe:

This firm represents Defendant, The Judicial Title Insurance Agency LLC (“Judicial Title”), in the above-referenced action. We write respectfully in accordance with Rule 4(A) of Your Honor’s Individual Rules to request a pre-motion conference with respect to a proposed motion by Judicial Title seeking sanctions against Plaintiffs and their attorneys pursuant to Fed. R. Civ. P. 11 (“Rule 11”).

Rule 11 “permits sanctions against a litigant who submits a pleading or motion that, evaluated under an objective standard of reasonableness . . . [has] no chance of success and [makes] no reasonable argument to extend, modify or reverse the law as it stands.” *Smith v. Westchester County Dept. of Corrections*, 577 Fed. Appx. 17 (2d Cir. 2014). “Rule 11, which is designed to deter baseless filings and curb abusive litigation, imposes an affirmative duty to conduct a reasonable inquiry into the factual and legal viability of claims. *Levine v. County of Westchester*, 164 F.R.D. 372, 374 (S.D.N.Y. 1996).

Judicial Title has separately submitted a pre-motion conference request regarding a proposed motion for dismissal or summary judgment with respect to Plaintiffs’ Fifth Cause of Action for Negligence (the only claim Plaintiffs assert against Judicial Title). See Docket No. 51 (Letter Motion for Conference from Adam Leitman Bailey to the Hon. Paul G. Gardephe dated March 30, 2017). That letter and the documentary

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evidence annexed thereto demonstrate that there is no factual or legal merit to Plaintiffs' negligence claim against Judicial Title. The documents submitted with Judicial Title's letter, including excerpts from the title report and Plaintiffs' title insurance policy are all documents that have been in Plaintiffs' possession since on or before June 19, 2015, when Plaintiffs closed on the purchase of the subject premises. Nevertheless, the documents were not acknowledged in Plaintiffs' pleading. Moreover, the Complaint appears to have been drafted in a manner designed to hide the disclaimers set forth throughout the title report and the very existence of the title insurance policy from this Court.

Prior to submitting this conference request, we wrote to Plaintiffs' counsel Jean Claude Mazzola, Esq. on March 13, 2017, in order to advise counsel regarding our position. We wished to make a good-faith effort to afford Plaintiffs' counsel an opportunity to withdraw the negligence claim against Judicial Title in case the failure to refer to the title insurance policy or to the governing law had been inadvertent. On a subsequent telephone conference held on March 16, 2017, Plaintiffs' counsel Mr. Mazzola maintained that he is an expert in title insurance, and that he has represented Lloyd's of London and other large insurers throughout his career. To date, Plaintiffs' counsel has not withdrawn the negligence claim asserted against Judicial Title or responded in writing to our March 13 letter.

We are available for a pre-motion conference at the Court's convenience.

Respectfully submitted,



Adam Leftman Bailey

cc: All counsel of record (via ECF)

Motions

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ECF

U.S. District Court**Southern District of New York****Notice of Electronic Filing**

The following transaction was entered by Pashman, Scott on 3/31/2017 at 11:57 AM EDT and filed on 3/31/2017

Case Name: Ilkowitz et al v. Durand et al

Case Number: [1:17-cv-00773-PGG](#)

Filer: The Judicial Title Insurance Agency LLC

Document Number: [52](#)

Docket Text:

LETTER MOTION for Conference by Defendant The Judicial Title Insurance Agency LLC requesting a pre-motion conference with respect to a proposed motion for sanctions against Plaintiffs and their attorneys pursuant to Fed. R. Civ. P. 11 addressed to Judge Paul G. Gardephe from Adam Leitman Bailey dated 03/31/2017. Document filed by The Judicial Title Insurance Agency LLC.(Pashman, Scott)

1:17-cv-00773-PGG Notice has been electronically mailed to:

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The following document(s) are associated with this transaction:

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[STAMP dcecfStamp_ID=1008691343 [Date=3/31/2017] [FileNumber=18068193-0] [495f5071b95ca6ee0aa91231139687f399bb6056a6990fa76a4a5b63ae2d7c2ec2fd9e5e0f07fbbd5000fa85b71d98405ea8137207ecc0f3af471049fbfac718]]